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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

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9 Zachary Contine, No. CV-15-00813-PHX-ESW  
10 Plaintiff,  
11 v.  
12 Ronald Credio, et al.,  
13 Defendants.  
14

**ORDER**

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16 The Court has considered Defendants' Application for Attorneys' Fees (Doc. 11),  
17 Affidavit of Kirsten Story (Doc. 11-1), and Statement of Consultation (Doc. 11-2). No  
18 response or objection has been filed to the Application. The matter is deemed submitted  
19 for decision.<sup>1</sup>

20 LRCiv 7.2(i) provides that if counsel does not serve and file a timely responsive  
21 memorandum to a motion, such non-compliance may be deemed a consent to the granting  
22 of the pending motion, and the Court may summarily dispose of the motion. Therefore,  
23 the Court may summarily dispose of Defendants' Application for Attorneys' Fees.

24 In addition, the Court recognizes that the standard by which the Court awards  
25 attorneys' fees under 42 U.S.C. § 1988 applies differently to prevailing defendants than  
26 to prevailing plaintiffs. A district court may award attorneys' fees pursuant to 42 U.S.C.

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28 <sup>1</sup> The parties have consented to the exercise of Magistrate Judge jurisdiction  
(Doc. 8).

1       § 1988 to a prevailing civil rights defendant if the court finds that the plaintiff's action  
2       was "unreasonable, frivolous, meritless, or vexatious." *Vernon v. Los Angeles*, 27 F.3d  
3       1385, 1402 (9<sup>th</sup> Cir. 1994); *Galen v. Los Angeles*, 477 F.3d 652, 666 (9<sup>th</sup> Cir. 2007). An  
4       action is considered "meritless" if it is "groundless or without foundation."  
5       *Christianburg Garment Co. v. EEOC*, 434 U.S. 412, 421 (1978). A finding of bad faith  
6       is not a necessary prerequisite to deeming an action "vexatious." *Id.* Simply because a  
7       plaintiff does not prevail, however, does not automatically render his case unreasonable  
8       or without foundation. *Id.*

With these criteria in mind, the Court in its discretion found that Defendants are entitled to an award of reasonable attorneys' fees in this case. (Doc. 10 at 2). Plaintiff's action was unreasonable and without merit. Plaintiff previously had litigated his current claim in Maricopa County Superior Court (Case No. CV 2013-001618). Final judgment had been entered against Plaintiff in favor of the State of Arizona and Arizona Department of Corrections on June 25, 2014. The named Defendants in this case are parties in privity with the Arizona Department of Corrections for purposes of claim and issue preclusion. Plaintiff's claims against Defendants were barred as a matter of law. *See Corbett v. Manor Care of Am., Inc.*, 146 P.3d 1027, 1039 (Ariz. Ct. App. 2006). To re-litigate the case in district court was unreasonable. In addition, the Court has found that Plaintiff failed to state a claim as a matter of law.

20 In determining reasonable attorneys' fees, the Court finds that Defendants are the  
21 prevailing party. They have prevailed on all claims raised. The factor analysis set forth  
22 in Defendants' Application is adopted by the Court as well-reasoned and supported by  
23 the record. The Court finds that Defendants' attorneys' fees of \$4,541.10 are reasonable  
24 in this case.

## Conclusion

26           **IT IS ORDERED** granting Defendants' Application for Attorneys' Fees (Doc.  
27           11).

1           **IT IS FURTHER ORDERED** awarding Defendants reasonable attorneys' fees in  
2 the amount of \$4,541.10.

3           Dated this 3rd day of September, 2015.

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Honorable Eileen S. Willett  
United States Magistrate Judge